

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.08.2006

CORAM

THE HONOURABLE MR. JUSTICE S. ASHOK KUMAR

CRL.RC.No.1532/2004

J.Devasagayam .. Petitioner/Complainant

Vs

Rufus Inbakumar ... Respondent/Accused

Revision case filed against the judgment passed by the learned Judicial Magistrate No.V, Vellore, Vellore District in C.C.No.568/2002 dated 28.6.2004 dismissing the petitioner's complaint under section 204(4) of Cr.P.C.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.T.S.Charles

ORDER

This revision has been filed by the complainant in C.C.No.568/2002 dated 28.6.2004 on the file of the Judicial Magistrate, Vellore, wherein the complaint was dismissed under section 204(4) of Cr.P.C.

2.Brief facts of the case are as follows:

The complainant filed a private complaint against the accused for the dishonour of cheque dated 10.7.2002 for a sum of Rs.30,000/- drawn on Punjab National Bank, Vellore. When the cheque was presented for collection on 11.7.2002, the same was returned as unpaid due to insufficiency of funds in the bank account of the accused. On 23.7.2002, a lawyer's notice was issued to the accused by the counsel for the complainant. The accused received the notice on 24.7.2002 but did not reply for the notice. Thereafter, the complainant filed a private complaint which was taken up on file as C.C.No.568/2002 and the complainant was examined as P.W.1. Thereafter, on 28.6.2004, the learned Magistrate dismissed the complaint on the ground that the complainant is present and the accused is absent and the absence of the accused was condoned under section

317 of Cr.P.C. and since the complainant has not taken any steps to produce the witnesses, the complaint was dismissed.

3. Aggrieved over the dismissal of the complaint, this revision is filed.

4. Mr. Kannadasan, learned counsel appearing for the complainant would contend that the accused was absent for several hearings and there was no progress in the case because of the absence of the accused and the absence is not the sole cause for the delay in further proceedings of the case and therefore, the dismissal of the complaint is bad in law. In support of his contention, the learned counsel also produced a judgment of the Hon'ble Supreme Court reported in 1998 CrL.L.R.856 (Associated Cement Co.Ltd. Vs. Keshjvanand). Para 6 of the Judgment reads as follows:

"Two constraints are imposed on the Court for exercising the power under section 256. First is, if the Court thinks that in a situation it is proper to adjourn the hearing, then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day, the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day, the Court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that date was quite unnecessary, then resorting to the step of axing down the complaint may not be proper exercise of power envisaged in the Section. The discretion must, therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice."

5.As far as this case is concerned, a perusal of the proceedings before the learned Judicial Magistrate would show that the accused was absent almost on all hearings except one or two. When the matter was called on 4.12.2002, 31.12.2002, 8.1.2003, 28.1.2003, 21.3.2003, 17.6.2003, 8.7.2003, 29.7.2003, 21.8.2003, 5.9.2003, 10.10.2003, 7.11.2003, 27.11.2003, 19.12.2003, 26.1.2004, 10.2.2004, 15.3.2004, 6.4.2004, 4.5.2004 and 4.6.2004, the accused was absent. Even taking up the complaint on file, it took several adjournments to secure the presence of the accused is seen from the docket. The complainant was absent only on 20.5.2003, 26.1.2004 and 4.6.2004, i.e., only 3 occasions. An application under section 256 of Cr.P.C. was filed by the complainant to condone the absence and the same was condoned. Whereas, as mentioned earlier, the accused was absent for so many hearings and for all the hearings, the learned Judicial Magistrate allowed the application filed on his behalf under section 317 of Cr.P.C. The perusal of records would show would show that the proceedings were delayed only by the conduct of the accused, but, unfortunately, learned Magistrate dismissed the complaint on the basis that the complainant failed to take steps to produce witnesses.

6.In a case of this nature, when P.W.1, complainant has been examined and the documents like cheque memo, copy of the lawyer's notice have been filed, the examination of the Official of the bank who returned the cheque for insufficiency of funds, is only a formality. Dismissing the complaint for allegedly not taking steps to secure such witnesses is not sustainable. Therefore, this revision case is allowed and the learned Judicial Magistrate is directed to take this case on file again and dispose of the same according to law.

ap

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Judicial Magistrate No.V,
Vellore.

2. The Chief Judicial Magistrate, Vellore

+ one cc to Mr. E. Kannadasan, Advocate sr no. 36650

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Cr1.RC.No.1532/2004



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